Supplemental Materials:

Responding to a Regulatory Investigation

By Jeff Kruske, Tom Piccone, Amy Rush, and Jeff Jamieson

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Kansas

Office of the Securities Commissioner

There is no PowerPoint for this presentation.

109 SW 9th Street
Suite 600
Topeka, KS 66612

Kansas
Office of the Securities Commissioner

Phone: (785) 296-3307
Fax: (785) 296-6872
Investor Services: 1-800-232-9580
www.ksc.ks.gov

Joshua A. Ney, Interim Commissioner

Sam Brownback, Governor

Final Target Letter

1. Provide a copy of each version of the Firm's Written Supervisory Procedures ("Firm's WSP") in effect from **DATE to DATE** (the "Relevant Period").
2. Identify the supervisory policies and procedures in effect during the Relevant Period concerning leveraged and/or inverse ETFs ("Non-Traditional ETFs"). Your response should identify where in the Firm's WSP this information is located.
3. Did the Firm ever distribute any other written instructions, guidelines, policies, or procedures relating to the use or supervision of Non-Traditional ETFs? If so, provide copies of all relevant documentation.
4. During the Relevant Period, did the Firm have a system in place for monitoring transactions in Non-Traditional ETFs? If so, provide a detailed narrative describing the system.
5. Provide a list of all exception reports available to any Firm Personnel during the Relevant Period related to Non-Traditional ETFs. For each report provide:
    a. name/title of reports;
    b. the frequency that reports are generated;
    c. name, CRD number and job title of all individuals responsible for reviewing the reports; and
    d. any guidance, written instructions, policies, or procedures relating to this report.
6. Has the Firm ever provided training specific to Non-Traditional ETFs? If so, provide dates of training, names and CRD numbers of those individuals conducting the training, a list of names and CRD number of those attending the training, and copies of all documentation during the training.
7. Provide a detailed narrative describing how the Firm vets new products. This narrative should identify all departments, committees and persons involved in the determination to approve new products for sale.
8. Provide a list of all Non-Traditional ETFs approved for sale by the Firm during the Relevant Period.
9. Provide a detailed narrative describing the process for approving the use of Non-Traditional ETFs. This narrative should identify all departments, committees and persons involved in the process and should state when Non-Traditional ETFs were approved for sale by the Firm's agents.

10. Provide any and all documentation reflecting or arising from the vetting of Non-Traditional ETFs, including but not limited to changes to the Firm's WSPs and product specific training material.
11. Provide examples of all exception or surveillance reports the Firm utilized during the Relevant Period that served as a compliance and/or suitability monitoring aid to the Firms management in connection with the supervision of Non-Traditional ETFs.
12. Provide a copy of each organizational chart in effect during the Relevant Period for the department(s) responsible for compliance and/or supervision of retail operations and transactions in effect during the Relevant Period. Please include names, CRD numbers, and job titles for each individual, as well as the dates in which the organization chart was in effect.
13. Identify each person who had a responsibility to supervise **NAME OF AGENT** (the "Identified Agent"). Include in your response the following information for each supervisor identified:
    a. A description of his or her specific supervisory obligations with respect to the Identified Agent;
    b. A description of his or her education, work experience, or other qualifications considered by the Firm before such person was given supervisory obligations with respect to the Identified Agent; and
    c. The name, CRD number, and business location of persons who supervised the activities of the supervisor during the Relevant Period.
14. Provide any and all correspondence between the Identified Agent any individual supervising the Identified Agent regarding Non-Traditional ETFs.
15. Provide any and all correspondence referencing Non-Traditional ETFs between any Firm customer and the Firm or the Identified Agent during the Relevant Period.
16. Provide copies of all investor complaints and arbitration/litigation claims concerning Non-Traditional ETFs submitted during the Relevant Period. Additionally, provide copies of the Firm's responses.
17. Provide a list of all accounts owned by or held for the benefit of current Kansas residents, whether open or closed, which at any point during the Relevant Period held Non-Traditional ETFs. Similarly, provide a list of all accounts owned by or held for the benefit of clients that were Kansas residents at the time that Non-Traditional ETFs were held in said accounts.
18. Provide a list of all current or former Kansas clients who at any time during the Relevant Period held Non-Traditional ETFs.

BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF KANSAS

In the Matter of:

GARTNER FINANCIAL GROUP, LLC (CRD #148539),
and
SCOTT ALAN GARTNER (CRD #1718453),

Respondents.

Docket No. 14 E001
KSC No. 2013-6110

Pursuant to K.S.A. 17-12a412

EMERGENCY ORDER OF SUSPENSION
and
NOTICE OF INTENT TO IMPOSE ADMINISTRATIVE SANCTIONS

COMES NOW the above-entitled matter for consideration by the Securities Commissioner of Kansas. Upon due deliberation, the Commissioner finds as follows:

Findings of Fact

JURISDICTION

1. Pursuant to K.S.A. 17-12a601, the Securities Commissioner of Kansas is charged with administering the Kansas Uniform Securities Act.

2. Pursuant to K.S.A. 17-12a412, found in the Kansas Uniform Securities Act, an order may be issued to revoke, suspend, condition the registration of, or penalize a person or entity that is registered with the Office of the Kansas Securities Commissioner as a broker-dealer, agent of a broker-dealer, investment adviser, or investment adviser representative.

3. At the time when the actions relevant to this matter occurred, Respondent Gartner Financial Group, LLC (Gartner Financial) was, and currently is, registered with the Office of the Kansas Securities Commissioner as an investment adviser.

4. At the time when the actions relevant to this matter occurred, Respondent Scott Alan Gartner (Gartner) was, and currently is, registered with the Office of the Kansas Securities Commissioner as an investment adviser representative.

5. Accordingly, the Kansas Securities Commissioner has jurisdiction over this matter.

RELEVANT TIME PERIOD

6. All actions and transactions relevant to this matter occurred between March 1, 2013 and July 25, 2013.

RESPONDENTS

7. At the time when the actions relevant to this matter occurred, Respondent Gartner Financial was a limited liability company organized under the laws of the State of Kansas and had a registered address of

8. Currently, Respondent Gartner Financial is in forfeited status with the Kansas Secretary of State's Office.

9. Respondent Gartner Financial has a current business address of

10. Respondent Gartner is an individual with a current business and residential address of

11. Respondent Gartner is the direct owner, president, chief executive officer, and chief compliance officer of Respondent Gartner Financial.

IMPEDING AN AUDIT OR INSPECTION

12. Pursuant to K.S.A. 17-12a412(d)(8), the Securities Commissioner of Kansas may discipline a person registered as an investment adviser or investment adviser representative for

impeding an audit or inspection and/or willfully failing to comply with a request for information by the Securities Commissioner or person designated by the Securities Commissioner in conducting investigations or audits.

13. On May 14, 2013, the Office of the Kansas Securities Commissioner mailed Respondents a letter notifying them that the Office of the Kansas Securities Commissioner had scheduled a compliance inspection for Respondent Gartner Financial.

14. The May 14, 2013, letter contained 22 specific requests for information and documents that Respondents were to provide to the Office of the Kansas Securities Commissioner.

15. The May 14, 2013, letter specified that the requested documents and information were to be delivered to the Office of the Kansas Securities Commissioner no later than May 24, 2013.

16. Respondents did not deliver the documents and information that were requested by the May 14, 2013, letter on or before May 24, 2013.

17. On June 4, 2013, the Office of the Securities Kansas Commissioner sent an email to Respondents informing them that they had not responded to the May 14, 2013, letter. A copy of the May 14, 2013, letter was attached to the email.

18. Respondents did not respond to the June 4, 2013, email.

19. On July 10, 2013, a representative from the Office of the Kansas Securities Commissioner drove to Respondents' address and personally handed Respondent Gartner a copy of the May 14, 2013, letter.

20. On July 10, 2013, the Office of the Kansas Securities Commissioner sent Respondents, via U.S. mail and email, a follow-up letter informing Respondents that their

response to the May 14, 2013, letter must be delivered to the Office of the Kansas Securities Commissioner on or before July 12, 2013.

21. On July 12, 2013, Respondent Gartner contacted the Office of the Kansas Securities Commissioner via telephone and stated that he intended to cease conducting business as an investment adviser representative for lack of activity and withdraw the registration of Respondent Gartner Financial as an investment adviser rather than provide the requested information to the Office of the Kansas Securities Commissioner.

22. During the July 12, 2013, telephone conversation, Respondent Gartner agreed to appear at the Topeka office of the Office of the Kansas Securities Commissioner at 1:30 p.m. on July 18, 2013. Additionally, Respondent Gartner was instructed to bring all documents and information requested by the May 14, 2013, letter.

23. Respondent Gartner appeared at the Topeka office of the Office of the Kansas Securities Commissioner at approximately 1:40 p.m. on July 18, 2013.

24. On July 18, 2013, Respondent Gartner did not bring, to the Topeka office of the Office of the Kansas Securities Commissioner, any of the documents and information requested by the May 14, 2013, letter.

25. At the conclusion of the July, 18, 2013, interview, Respondent Gartner was given a list of documents that he had agreed to provide during the course of the interview.

26. Respondent Gartner agreed to deliver the documents requested on the list referenced in Paragraph 25, above, on or before Tuesday July 23, 2013.

27. Respondent Gartner did not deliver the documents requested on the list referenced in Paragraph 25, above, on or before Tuesday July 23, 2013.

28. As of the date of this order, Respondents have not provided any of the information or documents requested by the Office of the Kansas Securities Commissioner pursuant to the May 24, 2013, request letter.

29. As of the date of this order, Respondents have not provided any of the documents requested on the list referenced in Paragraph 25, above.

30. During the July 18, 2013, interview, Respondent Gartner disclosed to representatives from the Office of the Kansas Securities Commissioner that he had invested $10,000 of his own money in a 1913 gold-backed Chinese government bond (Chinese bond).

31. During the July 18, 2013, interview, Respondent Gartner stated that he had not invested any other person's monies in the Chinese bond.

32. Despite Respondent Gartner's assertions to representatives from the Office of the Kansas Securities Commissioner that he had not invested any other person's monies in the Chinese bond, on March 27, 2013, Respondent Gartner visited William H. Norman (Norman) at Norman's home in Ozawkie, Kansas.

33. During the March 27, 2013, visit, Respondent Gartner claimed he had a good deal that would double Norman's investment in 90 days.

34. During the March 27, 2013, visit, Norman gave Respondent Gartner a check for $10,000 made payable to Respondent Gartner personally.

35. Respondent Gartner used the $10,000 that he received from Norman to purchase an interest in the Chinese bond described in Paragraph 30, above.

36. Respondent Gartner supplied false information to representatives of the Office of the Kansas Securities Commissioner when he stated that he did not invest monies from any other person in the Chinese bond.

Conclusions of Law

1. The Securities Commissioner of Kansas has jurisdiction over this matter pursuant to K.S.A. 17-12a412.

2. Respondents have impeded staff for Office of the Kansas Securities Commissioner from conducting an audit or inspection, in violation of K.S.A. 17-12a412(d)(8).

3. Respondents, willfully and without cause, failed to comply with requests for information made by staff for the Office of the Kansas Securities Commissioner, in violation of K.S.A. 17-12a412(d)(8).

4. By impeding an audit or inspection and failing to comply with requests for information made by staff for the Office of the Kansas Securities Commissioner, Respondents have prevented the Office of the Kansas Securities Commissioner from carrying out its statutory duty to administer the Kansas Uniform Securities Act and have thus created an immediate danger to Kansas investors.

5. Pursuant to K.S.A. 17-12a412(f) and K.S.A. 77-536, an emergency order of suspension is necessary in this matter to prevent harm to the public.

IT IS THEREFORE ORDERED by the Securities Commissioner that:

1. Respondent Gartner Financial Group, LLC is immediately suspended from conducting business as an investment adviser in the state of Kansas.

2. Respondent Scott Alan Gartner is immediately suspend from conducting business as an investment adviser representative in the state of Kansas.

3. The suspensions ordered herein shall remain in effect until this order is modified or vacated by further proceedings held in this matter.

FURTHERMORE, the Securities Commissioner hereby notifies the Respondents that he intends to impose, based upon the above Findings of Fact and Conclusions of Law, the following administrative sanctions:

1. A civil penalty of no more than $25,000 against Respondent Gartner Financial Group, LLC,

2. Revocation of the registration of Respondent Gartner Financial Group, LLC as an investment adviser in the state of Kansas,

3. A civil penalty of no more than $25,000 against Respondent Scott Alan Gartner, and

4. Revocation of the registration of Respondent Scott Alan Gartner as an investment adviser representative in the state of Kansas.

Opportunity for Hearing

If the Respondents wish to contest the Findings of Fact and Conclusions of Law set forth herein, the Respondents must file a request for hearing within thirty (30) days after service of this Order. The request for hearing must be in the manner and form prescribed by K.A.R. 81-11-5, and it must be filed with the Office of the Kansas Securities Commissioner, 109 SW 9th Street, Suite 600, Topeka, Kansas 66612. The request for hearing must be verified under oath by the Respondents and, if the Respondents dispute any of the Findings of Fact or Conclusions of Law set forth herein, the Respondents shall specifically deny such findings/conclusions or they will be deemed admitted. In addition, the Respondents may offer evidence and argument to mitigate the findings/conclusions set forth herein. If the findings/conclusions are properly disputed, a hearing officer will be appointed and the matter will be set for hearing. If no request for hearing is filed within thirty (30) days after service of this Order, this Order will be modified to include the above enumerated sanctions and will become final by operation of law.

IT IS SO ORDERED BY THE COMMISSIONER.

Entered at Topeka, Kansas, this 30th day of July, 2013.

Joshua A. Ney
Acting Securities Commissioner
State of Kansas

U.S. Securities and Exchange Commission

Information for Newly-Registered Investment Advisers

Prepared by the Staff of the Securities and Exchange Commission's Division of Investment Management and Office of Compliance Inspections and Examinations[1]

This information sheet contains general information about certain provisions of the Investment Advisers Act of 1940 (also called the "Advisers Act") and selected rules under the Advisers Act. It is intended to assist newly-registered investment advisers in understanding their compliance obligations with respect to these provisions. This information sheet also provides information about the resources available to investment advisers from the SEC to help advisers understand and comply with these laws and rules.

As an adviser registered with the SEC, you have an obligation to comply with all of the applicable provisions of the Advisers Act and the rules that have been adopted by the SEC. This information sheet does not provide a complete description of all of the obligations of SEC-registered advisers under the law. To access the Advisers Act and rules and other information, visit the SEC's website at www.sec.gov (the Advisers Act and rules are available at http://www.sec.gov/divisions/investment.shtml).[2]

Investment Advisers Are Fiduciaries

As an investment adviser, you are a "fiduciary" to your advisory clients. This means that you have a fundamental obligation to act in the best interests of your clients and to provide investment advice in your clients' best interests. You owe your clients a duty of undivided loyalty and utmost good faith. You should not engage in any activity in conflict with the interest of any client, and you should take steps reasonably necessary to fulfill your obligations. You must employ reasonable care to avoid misleading clients and you must provide full and fair disclosure of all material facts to your clients and prospective clients. Generally, facts are "material" if a reasonable investor would consider them to be important. You must eliminate, or at least disclose, all conflicts of interest that might incline you — consciously or unconsciously — to render advice that is not disinterested. If you do not avoid a conflict of interest that could impact the impartiality of your advice, you must make full and frank disclosure of the conflict. You cannot use your clients' assets for your own benefit or the benefit of other clients, at least without client consent. Departure from this fiduciary standard may constitute "fraud" upon your clients (under Section 206 of the Advisers Act).

Investment Advisers Must Have Compliance Programs

As a registered investment adviser, you are required to adopt and implement written policies and procedures that are reasonably designed to prevent violations of the Advisers Act. The Commission has said that it expects that these policies and procedures would be designed to prevent, detect, and correct violations of the Advisers Act. You must review those policies and procedures at least annually for their adequacy and the effectiveness of their implementation, and designate a chief compliance officer ("CCO") to be responsible for administering your policies and procedures (under the "Compliance Rule" — Rule 206(4)-7).

We note that your policies and procedures are not required to contain specific elements. Rather, you should analyze your individual operations and identify conflicts and other compliance factors that create risks for your firm and then design policies and procedures that address those risks. The Commission has stated that it expects your policies and procedures, at a minimum, to address the following issues to the extent that they are relevant to your business:

- *Portfolio management* processes, including allocation of investment opportunities among clients and consistency of portfolios with clients' investment objectives, your disclosures to clients, and applicable regulatory restrictions;
- The *accuracy of disclosures* made to investors, clients, and regulators, including account statements and advertisements;
- *Proprietary trading* by you and the personal trading activities of your supervised persons;
- *Safeguarding of client assets* from conversion or inappropriate use by your personnel;
- The accurate creation of *required records* and their maintenance in a manner that secures them from unauthorized alteration or use and protects them from untimely destruction;
- Safeguards for the *privacy protection* of client records and information;
- *Trading practices*, including procedures by which you satisfy your best execution obligation, use client brokerage to obtain research and other services (referred to as "soft dollar arrangements"), and allocate aggregated trades among clients;
- *Marketing* advisory services, including the use of solicitors;
- Processes to *value client holdings* and *assess fees* based on those valuations; and
- *Business continuity* plans.

Investment Advisers Are Required to Prepare Certain Reports and to File Certain Reports with the SEC

As a registered investment adviser, you are required to file an annual update of Part 1A of your registration form (Form ADV) through the *Investment Advisers Registration Depository* (IARD). You must file an annual updating amendment to your Form ADV within 90 days after the end of your fiscal year. In addition to making annual filings, you must *promptly* file an amendment to your Form ADV whenever certain information contained in your Form ADV becomes inaccurate (the Form ADV filing requirements are contained in Rule 204-1 of the Advisers Act, and in the instructions to the Form).

- Make sure your Form ADV is complete and current. Inaccurate, misleading, or omitted Form ADV disclosure is the most frequently cited finding from our examinations of investment advisers.
- Please keep the e-mail address of your contact person current (Form ADV, Part 1A, Item 1J). We use this e-mail address to keep you apprised of important developments (including when it's time to file an amendment to your Form ADV).

- Accurately report the amount of assets that you have under management (Form ADV, Part 1A, Item 5F(2)). Advisers who have less than $25 million of assets under management, who are not otherwise eligible to maintain their registration with the SEC, or who stop doing business as an investment adviser, should file a Form ADV-W through IARD to withdraw their registration.

With respect to Part 2A of your Form ADV, you are required to file it electronically through IARD. As with Part 1A, you must update Part 2 annually within 90 days of the end of your fiscal year and whenever it becomes materially inaccurate. Part 2B brochure supplements, are not required to be uploaded to IARD.

You may also be subject to other reporting obligations. For example, an adviser that exercises investment discretion (or that shares investment discretion with others) over certain equity securities (including convertible debt and options), which have a fair market value in the aggregate of $100 million or more, must file a Form 13F each quarter that discloses these holdings. "Discretionary authority" means that you have the authority to decide which securities to purchase, sell, and/or retain for your clients.

You should also be aware that it is unlawful to make any untrue statement or omit any material facts in an application or a report filed with the SEC (under Section 207 of the Advisers Act), including in Form ADV and Form ADV-W.

Investment Advisers Must Provide Clients and Prospective Clients with a Written Disclosure Statement

Registered investment advisers are required to provide their advisory clients and prospective clients with a written disclosure document (these requirements, and a few exceptions, are set forth in Rule 204-3 under the Advisers Act). As a registered adviser, you comply with this requirement by providing advisory clients and prospective clients with Part 2 of your Form ADV. This written disclosure document should be delivered to your prospective clients before or at the time of entering into an advisory contract (under certain conditions, you may comply with the delivery requirements through electronic media).

Each year, you also need to deliver Part 2 or summary of material changes to each client, without charge. You are required to maintain a copy of each disclosure document and each amendment or revision to it that was given or sent to clients or prospective clients, along with a record reflecting the dates on which such disclosure was given or offered to be given to any client or prospective client who subsequently became a client (under Rule 204-2(a)(14)).

Investment Advisers Must Have a Code of Ethics Governing Their Employees and Enforce Certain Insider Trading Procedures

As a registered investment adviser, you are required to adopt a code of ethics (under the "Code of Ethics Rule" — Rule 204A-1 under the Advisers Act). Your code of ethics should set forth the standards of business conduct expected of your "supervised persons" (*i.e.*, your employees, officers, directors and other people that you are required to supervise), and it must address personal securities trading by these people.

We note that you are not required to adopt a particular standard of business ethics. Rather, the standard that you choose should reflect your fiduciary obligations to your advisory clients and the fiduciary obligations of the people you supervise, and require compliance with the federal securities laws. In adopting a code of ethics, investment advisers may set higher ethical standards than the requirements under the law.

In order to prevent unlawful trading and promote ethical conduct by advisory employees, advisers' codes of ethics should include certain provisions relating to personal securities trading by advisory personnel. Your code of ethics must include the following requirements:

- Your "access persons" must report their personal securities transactions to your CCO or to another designated person each quarter. "Access persons" are any of your supervised persons who have access to non-public information regarding client transactions or holdings, make securities recommendations to clients or have access to such recommendations, and, for most advisers, all officers, directors and partners.

- Your access persons must submit a complete report of the securities that they hold at the time they first become an access person, and then at least once each year after that.[3] Your code of ethics must also require that your access persons obtain your approval prior to investing in initial public offerings or private placements or other limited offerings, including pooled investment vehicles (except if your firm has only one access person).

- Your CCO or another person you designate in addition to your CCO must review these personal securities transaction reports.

- Your supervised persons must promptly report violations of your code of ethics (*i.e.*, including the federal securities laws) to the CCO or to another person you designate (provided your CCO also receives a report on such issues). You must also maintain a record of these breaches.

Also, as a registered investment adviser, you are required to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent the misuse of material non-public information (under Section 204A of the Advisers Act). These policies and procedures must encompass your activities and those of your supervised persons. Advisers often include this prohibition on insider trading in their code of ethics.

Provide each of the people that you supervise with a copy of your code of ethics (and any amendments that you subsequently make to it), and also obtain a written acknowledgement from the supervised person that he/she has received it. In addition, you must describe your code of ethics in your Form ADV, Part 2, Item 11 and provide a copy to your advisory clients, if they request it.

Investment Advisers are Required to Maintain Certain Books and Records

As a registered adviser, you must make and keep true, accurate and current certain books and records relating to your investment advisory business (under "the Books and Records Rule" — Rule 204-2). The books and records that you must make and keep are quite specific, and are described below in part:

- Advisory business financial and accounting records, including: cash receipts and disbursements journals; income and expense account ledgers; checkbooks; bank account statements; advisory business bills; and financial statements.
- Records that pertain to providing investment advice and transactions in client accounts with respect to such advice, including: orders to trade in client accounts (referred to as "order memoranda"); trade confirmation statements received from broker-dealers; documentation of proxy vote decisions; written requests for withdrawals or documentation of deposits received from clients; and written correspondence you sent to or received from clients or potential clients discussing your recommendations or suggestions.

- Records that document your authority to conduct business in client accounts, including: a list of accounts in which you have discretionary authority; documentation granting you discretionary authority; and written agreements with clients, such as advisory contracts.

- Advertising and performance records, including: newsletters; articles; and computational worksheets demonstrating performance returns.

- Records related to the Code of Ethics Rule, including those addressing personal securities transaction reporting by access persons.

- Records regarding the maintenance and delivery of your written disclosure document and disclosure documents provided by certain solicitors who seek clients on your behalf.

- Policies and procedures adopted and implemented under the Compliance Rule, including any documentation prepared in the course of your annual review.

Some advisers are required to maintain additional records. For example, advisers that have custody and possession of clients' funds and/or securities must make and keep additional records that are described in the Books and Records Rule (Rule 204-2, paragraph (b)), and advisers who provide investment supervisory or management services to any client must also make and keep specific additional records (which are described in Rule 204-2, paragraph (c)).

You must keep these records for specified periods of time. Generally, most books and records must be kept for five years from the last day of the fiscal year in which the last entry was made on the document or the document was disseminated. You may be required to keep certain records for longer periods, such as records that support performance calculations used in advertisements (as described in Rule 204-2, paragraph (e)).

You are required to keep your records in an easily accessible location. In addition, for the first two of these years, you must keep your records in your office(s). If you maintain some of your original books and records somewhere other than your principal office and place of business, you must note this practice and identify the alternative location on your Form ADV (in Section 1K of Schedule D). Many advisers store duplicate copies of their advisory records in a location separate from their principal office in order to ensure the continuity of their business in the case of a disaster.

You may store your original books and records by using either micrographic media or electronic media. These media generally include microfilm or digital formats (*e.g.*, electronic text, digital images, proprietary and off-the-shelf software, and email). If you use email or instant messaging to make and keep the records that are required under the Advisers Act, you should keep the email, including all attachments that are required records, as examiners may request a copy of the complete record. In dealing with electronic records, you must also take precautions to ensure that they are secure from unauthorized access and theft or unintended destruction (similar safeguarding provisions regarding client information obtained by you is required by Regulation S-P under the Gramm-Leach-Bliley Act). In general, you should be able to promptly (generally within 24 hours) produce required electronic records that may be requested by the SEC staff, including email. In order to do so, the Advisers Act requires that you arrange and index required electronic records in a way that permits easy location, access, and retrieval of any particular electronic record.

Investment Advisers Must Seek to Obtain the Best Price and Execution for Their Clients' Securities Transactions

As a fiduciary, you are required to act in the best interests of your advisory clients, and to seek to obtain the best price and execution for their securities transactions. The term "best execution" means seeking the best price for a security in the marketplace as well as ensuring that, in executing client transactions, clients do not incur unnecessary brokerage costs and charges. You are not obligated to get the lowest possible commission cost, but rather, you should determine whether the transaction represents the best qualitative execution for your clients. In addition, whenever trading may create a conflicting interest between you and your clients, you have an obligation, before engaging in the activity, to obtain the informed consent from your clients after providing full and fair disclosure of all material facts. The Commission has described the requirement for advisers to seek best execution in various situations.

In selecting a broker-dealer, you should consider the full range and quality of the services offered by the broker-dealer, including the value of the research provided, the execution capability, the commission rate charged, the broker-dealer's financial responsibility, and its responsiveness to you. To seek to ensure that you are obtaining the best execution for your clients' securities trades, you must periodically evaluate the execution performance of the broker-dealers you use to execute clients' transactions.

You may determine that it is reasonable for your clients to pay commission rates that are higher than the lowest commission rate available in order to obtain certain products or services from a broker-dealer (*i.e.*, soft dollar arrangement). To qualify for a "safe harbor" from possible charges that you have breached your fiduciary duty by causing your clients to pay more than the lowest commission rate, you must use clients' brokerage commissions to pay for certain defined "brokerage or research" products and services, use such products and services in making investment decisions, make a good faith determination that the commissions that clients will pay are reasonable in relation to the value of the products and services received, and disclose these arrangements.

The SEC staff has stated that, in directing orders for the purchase or sale of securities, you may aggregate or "bunch" orders on behalf of two or more client accounts, so long as the bunching is done for the purpose of achieving best execution, and no client is systematically advantaged or disadvantaged by the bunching. The SEC staff has also said that, if you decide not to aggregate orders for client accounts, you should disclose to your clients that you will not aggregate and the potential consequences of not aggregating orders.

If your clients impose limitations on how you will execute securities transactions on their behalf, such as by directing you to exclusively use a specific broker-dealer to execute their securities transactions, you have an obligation to fully disclose the effects of these limitations to the client. For example, if you negotiate volume commission discounts on bunched orders, a client that has directed you to use a specific broker should be informed that he/she will forego any benefit from savings on execution costs that you might obtain for your other clients through this practice.

You should also seek to obtain the best price and execution when you enter into transactions for clients on a "principal" or "agency cross" basis. If you have acted as a principal for your own account by buying securities from, or selling securities to, a client, you must disclose the arrangement and the conflicts of interest in this practice (in writing) and also obtain the client's consent for *each* transaction prior to the time that the trade settles. There are also explicit conditions under which you may cross your advisory clients' transactions in securities with securities transactions of others on an agency basis (under Rule 206(3)-2). For example, you must obtain advance written authorization from the client to execute such transactions, and also provide clients with specific written disclosures. Compliance with Rule 206(3)-2 is generally not required for transactions internally crossed or

effected between two or more clients you advise and for which you receive no additional compensation (*i.e.*, commissions or transaction-based compensation); however, full disclosure regarding this practice should be made to your clients.

Requirements for Investment Advisers' Contracts with Clients

As a registered investment adviser, your contracts with your advisory clients must include some specific provisions (which are set forth in Section 205 of the Advisers Act). Your advisory contracts (whether oral or written) must convey that the advisory services that you provide to the client may not be assigned by you to any other person without the prior consent of the client. With limited exceptions, contracts cannot include provisions providing for your compensation to be based on the performance of the client's account. In addition, the SEC staff has stated that an adviser should not enter into contracts with clients, except with certain sophisticated clients, that contain terms or clauses commonly referred to as a "hedge clause" because such clauses or provisions are likely to lead other clients to believe that they have waived their rights of legal action, whether under the federal securities laws or common law.

Investment Advisers May be Examined by the SEC Staff

As a registered investment adviser, your books and records are subject to compliance examinations by the SEC staff (under Section 204 of the Advisers Act). The purpose of SEC examinations is to protect investors by determining whether registered firms are complying with the law, adhering to the disclosures that they have provided to their clients, and maintaining appropriate compliance programs to ensure compliance with the law. If you are examined, you are required to provide examiners with access to all requested advisory records that you maintain (under certain conditions, documents may remain private under the attorney-client privilege).

More information about examinations by the SEC and the examination process is provided in the brochure, "*Examination Information for Broker-Dealers, Transfer Agents, Clearing Agencies, Investment Advisers and Investment Companies*," which is available on the SEC's website at http://www.sec.gov/about/offices/ocie/ocie_exambrochure.pdf.

Requirements for Investment Advisers that Vote Proxies of Clients' Securities

As a registered investment adviser, if you have voting authority over proxies for clients' securities, you must adopt policies and procedures reasonably designed to ensure that you: vote proxies in the best interests of clients; disclose information to clients about those policies and procedures; and describe to clients how they may obtain information about how you have voted their proxies (these requirements are in Rule 206(4)-6 under the Advisers Act).

If you vote proxies on behalf of your clients, you must also retain certain records. You must keep: your proxy voting policies and procedures; the proxy statements you received regarding your client's securities (the Rule provides some alternative arrangements); records of the votes you cast on behalf of your clients; records of client requests for proxy voting information; and any documents that you prepared that were material to making a decision as to how to vote or that memorialized the basis for your decision (these requirements are described in Advisers Act Rule 204-2(c)(2)).

Requirements for Investment Advisers that Advertise their Services

To protect investors, the SEC prohibits certain types of advertising practices by advisers. An "advertisement" includes any communication addressed to more than

one person that offers any investment advisory service with regard to securities (under "the Advertising Rule" — Rule 206(4)-1). An advertisement could include both a written publication (such as a website, newsletter or marketing brochure) as well as oral communications (such as an announcement made on radio or television).

Advertising must not be false or misleading and must not contain any untrue statement of a material fact. Advertising, like all statements made to advisory clients and prospective clients, is subject to the general prohibition on fraud (Section 206 as well as other anti-fraud provisions under the federal securities laws). Specifically prohibited are: testimonials; the use of past specific recommendations that were profitable, unless the adviser includes a list of all recommendations made during the past year; a representation that any graph, chart, or formula can in and of itself be used to determine which securities to buy or sell; and advertisements stating that any report, analysis, or service is free, unless it really is free.

The SEC staff has said that, if you advertise your past investment performance record, you should disclose all material facts necessary to avoid any unwarranted inference. For example, SEC staff has indicated that it may view performance data to be misleading if it:

- does not disclose prominently that the results portrayed relate only to a select group of the adviser's clients, the basis on which the selection was made, and the effect of this practice on the results portrayed, if material;
- does not disclose the effect of material market or economic conditions on the results portrayed (e.g., an advertisement stating that the accounts of the adviser's clients appreciated in value 25% without disclosing that the market generally appreciated 40% during the same period);
- does not reflect the deduction of advisory fees, brokerage or other commissions, and any other expenses that accounts would have or actually paid;
- does not disclose whether and to what extent the results portrayed reflect the reinvestment of dividends and other earnings;
- suggests or makes claims about the potential for profit without also disclosing the possibility of loss;
- compares model or actual results to an index without disclosing all material facts relevant to the comparison (e.g., an advertisement that compares model results to an index without disclosing that the volatility of the index is materially different from that of the model portfolio); and
- does not disclose any material conditions, objectives, or investment strategies used to obtain the results portrayed (e.g., the model portfolio contains equity stocks that are managed with a view towards capital appreciation).

In addition, as a registered adviser, you may not imply that the SEC or another agency has sponsored, recommended or approved you, based upon your registration (under Section 208 of the Advisers Act). You should not use the term "registered investment adviser" unless you are registered, and you should not use this term to imply that as a registered adviser, you have a level of professional competence, education or special training. For example, the SEC staff has stated that advisers should not use the term "RIA" after a person's name because using initials after a name usually indicates a degree or a licensed professional position for which there are certain qualifications; however, there are no federal qualifications for becoming an SEC-registered adviser.

Requirements for Investment Advisers that Pay Others to Solicit New Clients

Registered investment advisers may pay cash compensation to others to seek out new clients on their behalf, commonly called "solicitors" or "finders," if they meet certain conditions (under Rule 206(4)-3 of the Advisers Act):

- The solicitor is not subject to certain disciplinary actions.
- The fee is paid pursuant to a written agreement to which you are a party and (with limited exceptions) the agreement must: describe the solicitor's activities and compensation arrangement; require that the solicitor perform the duties you assign and in compliance with the Advisers Act; require the solicitor to provide clients with a current copy of your disclosure document; and, if seeking clients for personalized advisory services, require the solicitor to provide clients with a separate written disclosure document containing specific information.
- You receive from the solicited client, prior to or at the time you enter into an agreement, a signed and dated notice confirming that he/she was provided with your disclosure document and, if required, the solicitor's disclosure document.
- You have a reasonable basis for believing that the solicitor has complied with the terms of your agreement.

Requirements for Investment Advisers that have Custody or Possession of Clients' Funds or Securities

Registered investment advisers that have "custody" or "possession" of client assets must take specific measures to protect client assets from loss or theft (under "the Custody Rule" — Rule 206(4)-2 under the Advisers Act).

The first step is to determine whether you have custody or possession of client assets. "Custody" is defined as "holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them." This includes situations in which you:

- have physical possession of client funds or securities, even temporarily;
- enter into arrangements (including a general power of attorney) authorizing you to withdraw funds or securities from the client's account (note that if you are authorized to deduct your advisory fees or other expenses directly from clients' accounts, you have custody); and
- serve in a capacity that gives you or a supervised person legal ownership or access to client funds or securities (note that if you are a general partner to a privately-offered pooled investment vehicle, you have custody).
- If you are a trustee, you may have custody.

If you have custody, with limited exceptions, you must maintain these client funds and securities at a "qualified custodian." Generally, qualified custodians include most banks and insured savings associations, SEC-registered broker-dealers, Commodity Exchange Act-registered futures commission merchants, and certain foreign financial institutions. With a limited exception, for client accounts over which you have custody, you must have a reasonable basis, after due inquiry, for believing that the client (or a designated representative) receives periodic reports *directly from the custodian* that contain specific information with respect to the funds and securities in custody. With respect to pooled investment vehicles over which you have custody,

the qualified custodian must send account statements for the pooled vehicle directly to each investor.

If you have custody of client funds or securities that are held at an unrelated, independent qualified custodian, then you must have a "surprise verification" by an independent public accountant. The independent public accountant must verify the funds and securities in your custody or possession at least once each calendar year, and must then promptly file a "certificate of accounting" with Form ADV-E electronically through IARD.[4]

If you have custody of client funds or securities that you or a related person maintains as a qualified custodian, then you must also have an internal control report completed by an independent public accountant registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board.

Staff answers to frequently asked questions regarding the custody rule may be found at http://www.sec.gov/divisions/investment/custody_faq_030510.htm.

Requirements for Investment Advisers to Disclose Certain Financial and Disciplinary Information

Registered investment advisers may be required to disclose certain financial and disciplinary information (under Rule 206(4)-4 under the Advisers Act). These requirements are described below.

Registered advisers that have custody or discretionary authority over client funds or securities, or that require prepayment six months or more in advance of more than $1,200 in advisory fees, must promptly disclose to clients and any prospective clients any financial conditions that are reasonably likely to impair their ability to meet their contractual commitments to their clients.

All registered advisers must also promptly disclose any legal or disciplinary events that would be material to a client's or a prospective client's evaluation of the adviser's integrity or its ability to meet its commitments to clients (regardless of whether the adviser has custody or requires prepayment of fees). The types of legal and disciplinary events that may be material include:

- Criminal or civil actions, where the adviser or a management person of the adviser was convicted, pleaded guilty or "no contest," or was subject to certain disciplinary actions with respect to conduct involving investment-related businesses, statutes, regulations, or activities; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion.

- Administrative proceedings before the SEC, other federal regulatory agencies, or any state agency where the adviser's or a management person's activities were found to have caused an investment-related business to lose its authorization to do business or where such person was involved in a violation of an investment-related statute or regulation and was the subject of specific disciplinary actions taken by the agency.

- Self-regulatory organization (SRO) proceedings in which the adviser or a management person was found to have caused an investment-related business to lose its authorization to do business; or was found to have been involved in a violation of the SRO's rules and was the subject of specific disciplinary actions taken by the organization.

Informational Resources Available From the SEC

The SEC provides a great deal of helpful information about the compliance

obligations of investment advisers on the SEC's website at http://www.sec.gov/divisions/investment.shtml. This information includes links to relevant laws and rules, staff guidance and studies, enforcement cases, and staff no-action and interpretive letters (generally from 2001 — present). In addition, the SEC's website contains a list of the source materials that were used in preparing this information sheet.

To assist chief compliance officers of investment advisers and investment companies in meeting their compliance responsibilities and to help enhance compliance in the securities industry, the SEC has established the "*CCOutreach Program.*" This program includes regional and national seminars on compliance issues of concern to CCOs. Information about *CCOutreach* and any scheduled events is available at http://www.sec.gov/info/ccoutreach.htm.

Finally, the SEC staff regularly receive calls and correspondence concerning the application of the federal securities laws, and advisers and other registrants are encouraged to communicate any questions or issues to SEC staff. To ensure that you reach the right person at the SEC, the SEC's website lists the names and contact information for SEC staff in the Division of Investment Management who are responsible for responding to communication from the public about specific topics (http://www.sec.gov/divisions/investment/imcontact.htm). With respect to issues or questions that arise in the context of a compliance examination by the SEC, advisers are encouraged to raise any questions or issues directly with the SEC examination team, or with examination supervisors in their local SEC office (contact information for senior examination staff is available at http://www.sec.gov/about/offices/ocie/ocie_org.htm).

Additional Information: Reference Materials

The following informational sources may be helpful.

Investment Advisers Are Fiduciaries

- Section 206 of the Advisers Act.
- *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180 (1963), available on the SEC's website at http://www.sec.gov/about/offices/ocie/iainfo/capitalgains1963.pdf.
- *In re Arleen W. Hughes*, Release No. 34-4048 (Feb 18, 1948), available on the SEC's website at http://www.sec.gov/litigation/opinions/2007/ia-4048.pdf.

Investment Advisers Must Have Compliance Programs

- Rule 206(4)-7 under the Advisers Act.
- *Compliance Programs of Investment Companies and Investment Advisers*, Advisers Act Release No. 2204 (Dec. 17, 2003), available on the SEC's website at http://www.sec.gov/rules/final/ia-2204.htm.

Investment Advisers Are Required to Prepare Certain Reports and to File Certain Reports with the SEC

- Form ADV (Part 1A and Part 2), instructions to the Form, and filing requirements contained Rule 204-1 under the Advisers Act.
- A list of the amendments that advisers must make to their Form ADV is in the *General Instructions to Form ADV* (Item 4) at http://www.sec.gov/pdf/fadvpo.pdf.

- SEC staff's responses to frequently asked questions regarding completing and filing Form ADV are available on the SEC's website at http://www.sec.gov/divisions/investment/iard/iardfaq.shtml.

- Additional information regarding Form 13F and an official list of securities that fall under Section 13(f) of the Securities Exchange Act are on the SEC's website at http://www.sec.gov/answers/form13f.htm.

Investment Advisers Must Provide Clients and Prospective Clients with a Written Disclosure Statement

- Rule 204-3 under the Advisers Act.

- *Use Of Electronic Media By Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under The Securities Act Of 1933, Securities Exchange Act Of 1934, And Investment Company Act*, Advisers Act Release No. 1562 (May 9, 1996), available on the SEC's website at http://www.sec.gov/rules/interp/33-7288.txt.

Investment Advisers Must Have a Code of Ethics Governing Their Employees and Enforce Certain Insider Trading Procedures

- Section 204A and Rule 204A-1 of the Advisers Act.

- *Investment Adviser Codes of Ethics*, Advisers Act Release No. 2256 (July 2, 2004), available on the SEC's website at http://www.sec.gov/rules/final/ia-2256.htm.

- SEC staff no-action letter, *Kleinwort Benson Investment Management Limited* (pub. avail. Dec. 15, 1993), available on the SEC's website at http://www.sec.gov/divisions/investment/noaction/kleinwort121593.htm.

- SEC staff no-action letter, *Corinne E. Wood (Herbert-Simon Co.)* (pub. avail. April 17, 1986), available on the SEC's website at http://www.sec.gov/divisions/investment/noaction/herbert-simon031886.htm.

Investment Advisers are Required to Maintain Certain Books and Records

- Rule 204-2 under the Advisers Act and Regulation S-P, privacy rules promulgated under Section 504 of the Gramm-Leach-Bliley Act.

- *Privacy of Consumer Financial Information (Regulation S-P)*, Advisers Act Release No. 1883 (June 22, 2000), which is available on the SEC's website at http://www.sec.gov/rules/final/34-42974.htm.

- *Electronic Recordkeeping by Investment Companies and Investment Advisers*, Advisers Act Release No. 1945 (May 24, 2001), which is available on the SEC's website at http://www.sec.gov/rules/final/ic-24991.htm.

Investment Advisers Must Seek to Obtain the Best Price and Execution for Their Clients' Securities Transactions

- Section 206 of the Advisers Act.

- *Interpretive Release Concerning Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters*, Exchange Act Release No. 23170 (Apr. 23, 1986), available on the SEC's website at http://www.sec.gov/rules/interp/34-23170.pdf.

- *Interpretation of Section 206(3) of the Investment Advisers Act of 1940*, Advisers Act Release No. 1732 (July 17, 1998), available on the SEC's website at http://www.sec.gov/rules/interp/ia-1732.htm.

- *Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934*, Exchange Act Release No. 54165 (July 18, 2006), available on the SEC's website at http://www.sec.gov/rules/interp/2006/34-54165.pdf.

- *In re Thompson and McKinnon*, Exchange Act Release No. 8310 (May 8, 1968), available on the SEC's website at http://www.sec.gov/litigation/opinions/34-8310.pdf.

- *In re Mark Bailey and Co.*, Advisers Act Release No. 1105 (Feb. 24, 1988), available on the SEC's website at http://www.sec.gov/litigation/admin/ia-1105.pdf.

- *In re Kingsley, Jennison, McNulty & Morse, Inc.*, Advisers Act Release No. 1396 (Dec. 23, 1993), available on the SEC's website at http://www.sec.gov/litigation/opinions/ia-1396.pdf.

- *In re Marvin & Palmer Associates, Inc.*, Advisers Act Release No. 1841 (Sept. 30, 1999), available on the SEC's website at http://www.sec.gov/litigation/admin/ia-1841.htm.

- SEC staff no-action letter, *United Missouri Bank of Kansas City, N.A.* (pub. avail. May 11, 1990), available on the SEC's website at http://www.sec.gov/investment/noaction/unitedmissouribank012395.htm.

- SEC staff no-action letter, *SMC Capital, Inc.* (pub. avail. Sept. 5, 1995), available on the SEC's website at http://www.sec.gov/divisions/investment/noaction/smccapital090595.htm.

- SEC staff no-action letter, *Pretzel & Stouffer* (Dec. 1, 1995), available on the SEC's website at http://www.sec.gov/divisions/investment/noaction/pretzelstouffer120195.htm.

Requirements for Investment Advisers' Contracts with Clients

- Section 205 of the Advisers Act.

- SEC staff no-action letter, *Auchincloss & Lawrence, Inc.* (pub. avail. Feb. 8, 1974) available on the SEC's website at http://www.sec.gov/divisions/investment/noaction/auchincloss010874.htm.

- SEC staff no-action letter, *Heitman Capital Management LLC* (pub. avail. Feb. 12, 2007), available on the SEC's website at http://www.sec.gov/divisions/investment/noaction/2007/heitman021207.pdf.

Investment Advisers May be Examined by the SEC Staff

- Section 204 of the Advisers Act.

Requirements for Investment Advisers that Vote Proxies of Clients' Securities

- Rule 206(4)-6 and Rule 204-2(c)(2) under the Advisers Act.

- *Proxy Voting by Investment Advisers*, Advisers Act Release No. 2106 (Jan. 31,

2003), available on the SEC's website at http://www.sec.gov/rules/final/ia-2106.htm.

Requirements for Investment Advisers that Advertise their Services

- Section 206 and Rule 206(4)-1 under the Advisers Act.
- SEC staff no-action letter, *Clover Capital Management, Inc.* (pub. avail. Oct. 28, 1986), available on the SEC's website at http://www.sec.gov/divisions/investment/noaction/clovercapital102886.htm.
- SEC staff no-action letter, *Investment Company Institute*, (pub. avail. Sept. 23, 1988), available on the SEC's website at http://www.sec.gov/divisions/investment/noaction/ici092388.htm.
- SEC staff no-action letter, *Mandell Financial Group.* (pub. avail. May 21, 1997), available on the SEC's website at http://www.sec.gov/divisions/investment/noaction/mandell052197.htm.

Requirements for Investment Advisers that Pay Others Cash to Solicit New Clients

- Rule 206(4)-3 of the Advisers Act.

Requirements for Investment Advisers that have Custody or Possession of Clients' Funds or Securities

- Rule 206(4)-2 under the Advisers Act.
- Staff Responses to Questions about the Custody Rule at http://www.sec.gov/divisions/investment/custody_faq_030510.htm
- *Custody of Funds or Securities of Clients by Investment Advisers*, Advisers Act Release No. 2986 (Dec. 30, 2009), available on the SEC's website at http://www.sec.gov/rules/final/2009/ia-2968.pdf.
- SEC staff no-action letter, *Investment Adviser Association*, (pub. avail. Sept. 20, 2007), available on the SEC's website at http://www.sec.gov/divisions/investment/noaction/2007/iaa092007.pdf.

Requirements for Investment Advisers to Disclose Certain Financial and Disciplinary Information

- Rule 206(4)-4 under the Advisers Act.

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[1] The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any publication or statement by any of its employees. The views expressed herein are those of the staff and do not necessarily reflect the views of the Commission or the other staff members of the SEC.

[2] This information sheet contains descriptions of the Advisers Act, rules, Commission releases, court decisions, Commission orders and opinions, which impose or explain legal obligations. It also contains staff interpretations and no-action letters that have been issued by the Division of Investment Management. Staff interpretations and no-action letters provide informal interpretative and advisory assistance and represent the views of persons who are continuously working with the provisions of the Advisers Act. Opinions expressed by the staff, however, are not an official expression of the Commission's views and they do not have the force of law. You may wish to speak with an attorney or a compliance professional about specific

provisions and how they apply to your firm. This information is current as of June 2007.

[3] A complete report contains: the title and type of security; the exchange ticker symbol or CUSIP number; the number of shares, and principal amount of the security; the name of any broker, dealer or bank where the access person has an account that holds securities for the access person's direct or indirect benefit; and the date the access person submits the report.

[4] There are exceptions to this requirement. For example, an adviser is not required to provide regular account statements with respect to a registered investment company or a limited partnership (or another type of pooled investment vehicle) that is subject to an audit at least annually and that distributes its audited financial statements prepared in accordance with generally accepted accounting principles (GAAP) to all investors, generally within 120 days of the end of its fiscal year (under Rule 206(4)-2).

http://www.sec.gov/divisions/investment/advoverview.htm

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U.S. Securities and Exchange Commission

Office of Compliance Inspections and Examinations[1] Investment Adviser Examinations: Core Initial Request for Information

November 2008

The content of our initial request for information reflects the nature and extent of an adviser's business. For an adviser that provides only traditional money management services to non-fund clients, our initial request for information reflects the core services and related controls that typically exist in that environment. If an adviser's business has other features, the information initially requested will include both the core set of information described below and additional information that will allow the examination staff to evaluate compliance activities for these additional activities and relationships. Some of these additional activities and relationships include sponsoring a family of registered investment companies, sponsoring one or more privately offered funds, participating in PIPES offerings, participating in a separately managed account (wrap-fee) program, being also registered as a broker-dealer and being a manager of managers.

Background Regarding Requested Information

Each investment adviser registered with the Commission is required to adopt and implement written policies and procedures reasonably designed to prevent violations of the Investment Advisers Act of 1940 (the "Advisers Act"), to review those policies and procedures at least annually for their adequacy and the effectiveness of their implementation, and to designate a chief compliance officer who is responsible for administering the policies and procedures (the "Compliance Rule" provisions are located in Rule 206(4)-7 under Advisers Act). The Compliance Rule is designed to protect investors by mandating that all advisers have internal programs to promote compliance with the Advisers Act. Each adviser should adopt policies and procedures that take into consideration the nature of that firm's operations. The policies and procedures should be designed to prevent violations from occurring, detect violations that have occurred, and correct promptly any violations that have occurred.

The initial phase of an examination includes a review of the firm's business and investment activities, its organizational affiliations and its corresponding compliance policies and procedures. The staff will request information and documents and speak with the firm's employees to ensure an understanding of the firm's business and investment activities and the operation of its compliance program. Using the information obtained, the staff will assess whether the firm's compliance policies and procedures appear to effectively address the firm's compliance risks. This work includes testing the firm's compliance program in particular areas.

The following points provide an overview of the core information the staff requests:

- Certain general information to provide an understanding of the firm's business and investment activities, including organizational charts, demographic and other data regarding advisory clients, and a record of all trades placed for its clients (trade blotter).

- Information about the compliance risks that the firm has identified (e.g., an inventory of compliance risks) and the written policies and procedures the firm has established and implemented to address each of those risks to provide an understanding of the firm's compliance risks and corresponding controls.

- Documents relating to the results of and output from the various transactional (quality control) and period (forensic) testing conducted to provide an understanding of how effectively a firm has implemented its compliance policies and procedures. This includes the results of any compliance reviews, quality control analyses, surveillance, forensic or transactional tests the firm has used to determine if activities have been performed as expected and to identify activities or transactions that have fallen short of or breached related policies and procedures.

- Information regarding the results of any tests and follow-up actions taken by the firm to address shortfalls or breaches revealed by such tests to provide an understanding of steps taken by the firm to address the results of compliance reviews, quality control, forensic or transactional tests conducted. This information might include, for example, warnings to or disciplinary action of employees, changes in policies or procedures, redress to affected clients, or other measures.

- Information to perform testing for compliance in various areas.

Core Initial Information Examiners Request

Described below are the types of core information that examiners will request during a routine examination of a typical money manager that does not engage in additional activities and/or have additional relationships. Also, for some of the items, a copy (either electronic or hard copy) may be requested, while examiners may only request access to other items.

General Information

- Organizational structure, affiliations, and control persons.

- Current and former officers and/or directors.

- Standard client advisory contracts or agreements.

- Sub-advisory agreements executed with other investment advisers.

- Fees and payments for services rendered.

- Power of attorney obtained from clients.

- Joint ventures or other businesses (with respect to the firm or any officer, director, portfolio manager, or trader).

- Disclosure documents and filings with regulators.

- Service providers and the services they perform.

- Remedial actions taken against supervised persons.
- Threatened, pending and settled litigation or arbitration involving the Adviser or any supervised person.

Information Regarding the Compliance Program, Risk Management and Internal Controls

- Compliance Program
  - Compliance policies and procedures in effect during the examination period.
  - Tests performed (i.e., compliance reviews, quality control analyses, surveillance, and/or forensic or transactional tests performed by the firm).
- On-going Risk Identification and Assessment
  - Inventory of compliance risks that forms the basis for policies and procedures and notations regarding changes made to the inventory.
  - Documents mapping the inventory of risks to written policies and procedures.
  - Written guidance provided to employees regarding compliance risk assessment process and procedures to mitigate and manage compliance risks.
- Internal audit review schedules and completed audits.
- Remote office and/or independent advisory contractor oversight process.
- Client complaints and correspondence and the process for monitoring such communications.
- Annual and/or interim reviews of policies and procedures, including interim reports.
- Record of non-compliance with the Code of Ethics.
- Valuation
  - Pricing services, quotation services, and externally-acquired portfolio accounting systems used in the valuation process and payment information.
  - Fair-valued and illiquid securities held by clients.
  - Advisory fee calculations.
- Information Processing, Reporting, and Protection
  - Regulation S-P guidance.
  - Controls of employee access to physical locations containing customer information.

- Electronic access controls.
- Business continuity plan.

Information to Facilitate Testing with Respect to Advisory Trading Activities

- Trade blotter.
- Advisory Information for Individual Clients
  - Current advisory client information regarding: account inception, type, balance, and management discretion; affiliation with the firm; custodial arrangements; account statement delivery; firm trading authority; services provided; investment strategy; portfolio manager; participation in composites; brokerage arrangements; fee computation; fee payment arrangements; and consultant related to obtaining the client, if any.
  - Advisory clients lost during review period.
- Portfolio Management
  - Securities held in all client portfolios, including information identifying each client holding an interest, the amount owned by each client, the aggregate number of shares or principal and/or notional amount held and total market value of the position.
  - Investment and/or portfolio management committee meetings and minutes, if held and maintained.
  - Publicly traded companies for which employees of the Adviser or its affiliates serve as officers and/or directors.
  - Companies for which employees of the adviser or its affiliates serve on creditors' committees.
  - Most profitable and least profitable investment decisions.
- Brokerage Arrangements
  - Brokerage arrangements and best execution evaluation documentation.
  - Soft dollar budget and products and services obtained using clients' brokerage commissions.
  - Commission-sharing arrangements.
  - Affiliated broker-dealers.
  - Securities in which the Adviser or an affiliate was a market maker.
  - Securities purchased for clients in which the firm or an affiliate underwrote or participated as underwriting manager, purchase group, and/or syndicate or selling group.
  - Trade errors and related information.

- Trade allocation information regarding initial public offerings and secondary offerings in which clients, proprietary accounts or access persons participated.
- Conflicts of Interest and/or Insider Trading
    - Code of Ethics and insider trading policies and procedures for firm and affiliates.
    - Exemptions from Code of Ethics for supervised persons.
    - Personal trading policies and procedures of contract employees and temporary employees.
    - Reports of securities transactions reported by access persons.
    - Non-public information control and monitoring procedures.
    - Fee splitting or revenue sharing arrangements.

Information to Perform Testing for Compliance in Various Areas

- Performance Advertising and/or Marketing
    - Pitch books, one-on-one presentations, pamphlets, brochures, and other promotional and/or marketing materials used for each investment strategy and/or mandate.
    - Advertisements used to inform or solicit clients.
    - Website access, if restricted.
    - Composite performance returns.
    - Accounts included in each composite and specific client account performance and supporting documentation for such clients.
    - Accounts not included in a composite.
    - Terminated composites.
    - Persons paying and compensation received for referring clients.
    - Third-party solicitor agreements, correspondence, compensation paid, and separate disclosure document.
    - Requests for proposals.
    - Third-party consultant questionnaires.
    - Global Investment Performance Standards compliance documentation.
- Financial Records
    - Balance sheet, trial balance, income statement, and cash flow statements.
    - Cash receipts and disbursements journal.

- General ledger and chart of accounts.
- Loans and sales of firm or affiliate's stock.

- Custody
  - Custodial confirmation that account statements are sent directly to clients.
  - Custodial confirmation of positions for specific clients.
- Anti-Money Laundering
  - Office of Foreign Assets Control ("OFAC") policies and procedures.
  - Internal Revenue Code ("IRC") and Bank Secrecy Act ("BSA") reporting procedures.

[1] The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the staff of the Office of Compliance Inspections and Examinations and do not necessarily reflect the views of the Commission or the other staff members of the SEC. Examinations indicating deficiencies generally result in (non-public) deficiency letters requesting that the firm take corrective action. Serious deficiencies may be referred to the SEC's enforcement staff.

http://www.sec.gov/info/cco/requestlistcore1108.htm

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REQUESTS FOR INDEPENDENT CONFIRMATION OF ASSETS:

The U.S. Securities and Exchange Commission ("SEC") conducts examinations of the books and records of securities firms and investment advisers that are regulated by the SEC. As part of these examinations, we may request independent confirmations of account balances directly with various persons, including clients or shareholders. These requests are made pursuant to a form called "*Account Information Confirmation.*" Please see below a blank copy of such a form.

If you receive an *Account Information Confirmation* regarding a securities firm or investment adviser with whom you do business, your response is voluntary, but your cooperation would be appreciated and would help us in our oversight of the regulated community. Also, please note that these requests may be made in any type of examination. We wish to emphasize that our request that you complete an *Account Information Confirmation* should in no way be an indication of any misconduct by the firm being inspected, any representative of the firm, and/or any other individual or entity.

In the past, examiners have made requests for independent confirmations of assets in forms that have differed from the model below. However, as of December 2012, all requests will be in this form.

If you have any questions or concerns about an *Account Information Confirmation,* do not hesitate to raise them with the examiners identified in the cover letter. In addition, if you wish to confirm that the request has been sent to you by SEC examiners, please call the main telephone number of the office that sent you the request and ask for the examiners identified in the cover letter. The telephone numbers of all SEC offices are available on the SEC's website at: http://www.sec.gov/contact/addresses.htm. Alternatively, if you prefer to speak with staff in the SEC headquarters office located in Washington D.C., please call the "Examination Hotline" at (202) 551-EXAM (3926).

Thank you for your cooperation.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
[REGIONAL OFFICE NAME/OCIE]
[ADDRESS]
[ADDRESS]

[Date]

[Client Name]
[Street Address]
[City, State Zip]

Re: Examination of [Firm Name]

Dear [Mr./Ms.][Name]:

The U.S. Securities and Exchange Commission conducts examinations of the books and records of securities firms and investment advisers that are regulated by the SEC. As part of these examinations, we may request independent confirmations of account balances directly with various persons, including clients or shareholders. We wish to emphasize that this request should in no way be construed as an indication of any misconduct by the firm being inspected, any representative of the firm, and/or any other individual or entity.

Attached you will find a form called "*Account Information Confirmation.*" We request that you complete this form and return it to **us** in the enclosed, self-addressed envelope. To facilitate the completion of our examination, we ask that you return the completed form within ten days.

Enclosed is a copy of a form (SEC Form 2866) that provides information for persons providing information to the SEC. This request for information is voluntary and you are not required to provide information in response to this letter.

We appreciate your cooperation with this routine request. If you have any questions regarding this routine request, please contact [redacted] at [redacted]. In addition, if you wish to confirm that I am an SEC examiner, please call the main telephone number of my office. The telephone numbers of all SEC offices are available on the SEC's website at: http://www.sec.gov/contact/addresses.htm. Alternatively, if you prefer to speak with staff in the SEC headquarters office located in Washington D.C., please call the "Examination Hotline" at (202) 551-EXAM (3926).

Sincerely,

[Name]
[Title]

Enclosures: Account Information Confirmation and Form 2866

ACCOUNT INFORMATION CONFIRMATION

[Client Name]
[Street Address]
[City, State Zip]

As of [Date], [Name of Adviser]'s records indicate that:

- the total balance of your account [give name of fund or type of account and account number, if available] was $[balance];
- your last deposit in the account was on [XX/XX/XXXX] in the amount of $[XXXX]; and
- your last withdrawal in the account was on [XX/XX/XXXX] in the amount of $[XXXX].

Please Check:

☐ This balance, deposit and withdrawal information *is* consistent with **the account statements sent directly to me by [Custodian].**

☐ This balance, deposit and withdrawal information is *not* consistent with **the account statements sent directly to me by [Custodian].**

(Please describe any inconsistencies in the space provided below.)

Account information confirmation is requested solely for the account identified above and for the date specified. If you have other accounts maintained or managed by this firm and would like to provide information on those other accounts, please do so in the space provided above. In addition, if you have account information for a date other than the date specified above and would like to comment on the information you have for the account identified as of the other date, you may provide information regarding the account and the other date in the space provided above.

_____
Name (please print)

_____
Name of Company (if applicable)

_____
Signature/Date

Information Request List

Please provide the following items for the period ("Examination Period"):

General Information

1. Adviser's organization chart showing ownership percentages of the Adviser and control persons, and a schedule or chart of all affiliated entities.

2. Compliance policies and procedures that were in effect during the Examination Period for the Adviser and its affiliates. If not included specifically in the Compliance Manual, please provide and policies and procedures specific to:
   a. Adviser's wrap trading desk, including trade placement, order allocation, step-out trades, and best execution;
   b. Adviser's monitoring for wrap accounts with high cash balances;
   c. Adviser's monitoring for wrap accounts with low levels of trading;
   d. Adviser's oversight process of any branch offices and/or investment advisory representatives not located at the home office;
   e. Adviser's initial and on-going suitability reviews specific to wrap programs. If none, describe the factors used by the firm to determine the suitability of wrap clients initially and on an on-going basis.

3. Any compliance reviews (annual or otherwise) of Adviser's wrap trading for the Examination Period.

4. Provide the information below for all wrap fee programs managed by Adviser. The preferred format for this information is in Excel.

   a. Name of the wrap program;
   b. Name(s) of the investment manager(s);
   c. Name(s) of any sub-adviser(s);
   d. Program's inception date and termination date (if during the Examination Period);
   e. A brief description of the program's strategy and investments;
   f. Number of accounts in the program;
   g. Whether the portfolio manager (and/or sub-adviser) has discretionary authority over the account;
   h. Total value of the program's assets;
   i. Whether any of the accounts in the program custody their assets outside of the Adviser. If so, please provide the account names and their respective custodians;
   j. Total fee percentage charged by Sponsor
   k. Total fee percentage received by Adviser

5. Provide the information below for all current advisory clients, including privately offered funds. The preferred format for this information is in Excel.

   a. the account number, name and current balance, as of ;
   b. the name of the wrap program that the account participates in, if any.

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c. the type of account (*e.g.*, individual, defined benefit retirement plan, registered fund, or unregistered fund);
d. whether the client is a related person, affiliated person, or a proprietary account;
e. the account custodian and location;
f. whether or not the Adviser has discretionary authority;
g. the investment strategy (*e.g.*, global equity, high-yield, aggressive growth, long-short, or statistical arbitrage) and the performance composite in which it is included, if any;
h. the Account portfolio manager(s);
i. the value of each client's account that was used for purposes of calculating its advisory fee for the most recent billing period.

6. Documentation maintained regarding any reviews conducted of the Adviser's policies and procedures, including any annual and/or interim reports.

7. Any client complaints regarding Adviser's wrap fee programs.

8. Any threatened, pending and settled litigation or arbitration involving Adviser or any "supervised persons" regarding Adviser's wrap fee programs. Include a description of the allegations, the status, and a brief description of any "out of court" or informal settlement.

Disclosures

9. A copy of each standard client advisory contracts or agreements in place during the Examination Period, noting the date of any amendment.

10. Copies of the contracts between Adviser, sponsor, and the investment manager(s) for each wrap fee program listed above.

11. The Form ADV Part 2 furnished to clients during the Examination Period and any disclosure document used in conjunction with or in lieu of Part 2.

12. A copy of each wrap fee program's disclosure brochure furnished to clients during the Examination Period.

13. A list of all marketing materials used to promote wrap fee programs managed by Adviser.

Inactive Accounts

14. Any analysis conducted by Adviser to identify wrap accounts with low levels of trading.

15. Any analysis conducted by Adviser to identify wrap accounts with high cash balances.

16. A trade blotter (*i.e.*, purchases and sales journal) that lists transactions (including all trade errors, cancellations, re-bills, and reallocations) in securities and other financial instruments

(including privately offered funds) for: current and former clients; proprietary and/or trading accounts and access persons. The preferred format for this information is to provide it in Excel as indicated in Exhibit 1.

Transaction Fees

17. Any wrap trading desk best execution reviews conducted during the Examination Period.

18. State whether the firm permits advisers participating in its wrap programs to "trade away" from the firm's wrap trading desk. If so, please describe the conditions under which this is permissible (i.e. for best execution, for fixed income trades, for small-cap trades, for OTC trades, etc.).

19. State whether the firm's wrap trading desk has the ability to determine whether a wrap adviser is "trading away" from the wrap trading desk on a regular or ongoing basis. Please describe whether this activity is tracked and used in monitoring best execution and determining the suitability for wrap clients.

20. Describe any fees that a client may pay for financial products or services that are not offered as part of the bundled fee (transaction fee mutual funds, options, etc.), if applicable.

21. Describe any transaction-based fee that the Adviser may pay on behalf of the client (ticket charges, trade away fees, etc.), if applicable.

IDENTIFICATION OF RISKS/CYBERSECURITY GOVERNANCE

1. For each of the following practices employed by the Firm for management of information security assets, please provide the month and year in which the noted action was last taken; the frequency with which such practices are conducted; the group with responsibility for conducting the practice; and, if not conducted firmwide, the areas that are included within the practice. Please also provide a copy of any relevant policies and procedures.

    - Physical devices and systems within the Firm are inventoried
    - Software platforms and applications within the Firm are inventoried.
    - Maps of network resources, connections, and data flows (including locations where customer data is housed) are created or updated.
    - Connections to the Firm's network from external sources are categorized.
    - Resources (hardware, data, and software) are prioritized for protection based on their sensitivity and business value.
    - Logging capabilities and practices are assessed for adequacy, appropriate retention, and secure maintenance

2. Please provide a copy of the Firm's written information security policy.

3. Please indicate whether the Firm conducts periodic risk assessments to identify cybersecurity threats, vulnerabilities, and potential business consequences. If such assessments are conducted:

    a. Who (business group/title) conducts them, and in what month and year was the most recent assessment completed?

    b. Please describe any findings from the most recent risk assessment that were deemed to be potentially moderate or high risk and have not yet been fully remediated.

4. Please indicate whether the Firm conducts periodic risk assessments to identify physical security threats and vulnerabilities that may bear on cybersecurity. If such assessments are conducted:

    a. Who (business group/title) conducts them, and in what month and year was the most recent assessment completed?

b. Please describe any findings from the most recent risk assessments that were deemed to be potentially moderate or high risk and have not yet been fully remediated.

5. If cybersecurity roles and responsibilities for the Firm's workforce and managers have been explicitly assigned and communicated, please provide written documentation of these roles and responsibilities. If no written documentation exists, please provide a brief description.

6. Please provide a copy of the Firm's written business continuity of operations, plan that addresses mitigation of the effects of a cybersecurity incident and/or recovery from such an incident if one exists.

7. Does the Firm have a Chief Information Security Officer or equivalent position? If so, please identify the person and title. If not, where does principal responsibility for overseeing cybersecurity reside within the Firm?

8. Does the firm maintain insurance that specifically covers losses and expenses attributable to cybersecurity incidents? If so, please briefly describe the nature of the coverage and indicate whether the Firm has filed any claims, as well as the nature of the resolution of those claims.

Protection of Firm Networks and Information

9. Please identify any published cybersecurity risk management process standards, such as those issued by the National Institute of Standards and Technology (NIST) or the International Organization for Standardization (ISO), the Firm has used to model its information security architecture and processes.

10. Please indicate which of the following practices and controls regarding the protection of its networks and information are utilized by the Firm, and provide any relevant policies and procedures for each item.

    - The Firm provides written guidance and periodic training to employees concerning information security risks and responsibilities. If the Firm provides such guidance and/or training, please and which groups of employees participated in each training event conducted since January 1, 2013.

    - The Firm restricts users to those network resources necessary for their business functions. If so, please describe those controls, unless fully described within policies and procedures.

- The Firm maintains an environment for testing and development of software and applications that is separate from its business environment.

- The Firm maintains a baseline configuration of hardware and software, and users are prevented from altering that environment without authorization and an assessment of security implications.

- The Firm has a process to manage IT assets through removal, transfers, and disposition.

- The Firm has a process for ensuring regular system maintenance, including timely installation of software patches that address security vulnerabilities.

- The Firm's information security policy and training address removable and mobile media.

- The Firm maintains protection against Distributed Denial of Service (DDoS) attacks for critical internet-facing IP addresses. If so, please describe the internet functions protected and who provides this protection.

- The Firm maintains a written data destruction policy.

- The Firm maintains a written cybersecurity incident response policy. If so, please provide a copy of the policy and indicate the year in which it was most recently updated. Please also indicate whether the Firm conducts tests or exercises to assess its incident response policy, and if so, when and by whom the last such test or assessment was conducted.

- The Firm periodically tests the functionality of its backup system. If so, please provide the month and year in which the backup system was most recently tested.

11. Please indicate whether the Firm makes use of encryption. If so, what categories of data, communications, and devices are encrypted and under what circumstances?

12. Please indicate whether the Firm conducts periodic audits of compliance with its information security policies. If so, in what month and year was the most recent such audit completed, and by whom was it conducted?

Risks Associated With Remote Customer Access and Funds Transfer Requests

13. Please indicate whether the Firm provides customers with on-line account access. If so, please provide the following information:

    a. The name of any third party or parties that manage the service.

b. The functionality for customers on the platform (*e.g.*, balance inquiries, address and contact information changes, beneficiary changes, transfers among customer's accounts, withdrawals or other external transfers of funds).

c. How customers are authenticated for on-line account access and transactions.

d. Any software or other practice employed for detecting anomalous transaction requests that may be the result of compromised customer account access.

e. A description of any security measure used to protect consumer PINs stored on the sites.

f. Any information given to customers about reducing cybersecurity risks in conducting transactions/business with the Firm.

14. Please provide a copy of the Firm's procedures for verifying the authenticity of email requests seeking to transfer customer funds. If no written procedures exist, please describe the process.

15. Please provide a copy of any Firm policies for addressing responsibility for losses associated with attacks or intrusions impacting customers.

    a. Does the Firm offer its customers a security guarantee to protect them against hacking of their accounts? If so, please provide a copy of the guarantee if one exists and a brief description.

Risks Associated With Vendors and Other Third Parties

16. If Firm conducts or requires cybersecurity risk assessments of vendors and business partners with access to Firm's networks, customer data, or other sensitive information, or due to the cybersecurity risk of the outsourced function, please describe who conducts this assessment, when it is required, and how it is conducted. If a questionnaire is used, please provide a copy. If assessments by independent entities are required, please describe any standards established for such assessments.

17. If the Firm regularly incorporates requirements relating to cybersecurity risk into its contracts with vendors and business partners, please describe these requirements and circumstances in which they are incorporated. Please provide a sample copy.

18. Please provide a copy of policies and procedures and any training materials related to information security procedures and responsibilities for trainings conducted since January 2013 for vendors and business partners authorized to access its network.

19. If the Firm assesses the segregation of sensitive network resources from resources accessible to third parties, who (business group title) performs this assessment, and provide a copy of any relevant policies and procedures?

20. If vendors, business partners, or other third parties may conduct remote maintenance of the Firm's networks and devices, describe any approval process, logging process, or controls to prevent unauthorized access, and provide a copy of any relevant policies and procedures.

Detection of Unauthorized Activity

21. For each of the following practices employed by the Firm to assist in detecting unauthorized activity on its networks and devices, please briefly explain how and by whom (title, department and job function) the practice is carried out.

- Identifying and assigning specific responsibilities by job function, for detecting and reporting suspected unauthorized activity.
- Maintaining baseline information about expected events on Firm's network.
- Aggregating and correlating event data from multiple sources.
- Establishing written incident alert thresholds.
- Monitoring the Firm's network environment to detect potential cybersecurity events.
- Monitoring the Firm's physical environment to detect potential cybersecurity events.
- Using software to detect malicious code on Firm networks and mobile devices.
- Monitoring the activity of third party service providers with access to Firm's networks.
- Monitoring the presence of unauthorized users, devices, connections, and software on the Firm's networks.
- Evaluating remotely-initiated requests for transfers of customer assets to identify anomalous and potentially fraudulent requests.
- Using data loss prevention software.
- Conducting penetration tests and vulnerability scans. If so, please identify the month and year of the most recent penetration test and recent vulnerability scan, whether they were conducted by Firm employees or third parties, and describe any findings from the most

recent risk test and/or assessment that were deemed to be potentially moderate or high risk but have not yet been addressed.

- Testing the reliability of event detection processes. If so, please identify the month and year of the most recent test.

- Testing reliability of event detection processes. If so, please identify the month and year of the most recent test.

- Using the analysis of events to improve the Firm's defensive measures and policies.

Other

22. Did the Firm update its written supervisory procedures to reflect the Identity Theft Red Flags Rules, which became effective in 2013 (17 CFR § 248 – Subpart C – Regulation S-ID)?

    a. If not, why?

23. How does the Firm identify relevant best practices regarding cybersecurity for its business model?

24. **Since January 1, 2013**, has your Firm experienced any of the following types of events? If so, please provide a brief summary for each category listed below, identifying the number of such incidents (approximations are acceptable when precise numbers are not readily available) and describing their significance and any effects on the Firm, its customers, and its vendors or affiliates. If the response to any one item includes more than 10 incidents, the respondent may note the number of incidents and describe incidents that resulted in losses of more than $5,000, the unauthorized access to customer information, or the unavailability of a Firm service of more than 10 minutes. The record or description should, at a minimum include: the extent to which losses were incurred, customer information accessed, and Firm services impacted; the date of the incident; the date the incident was discovered and the remediation for such incident.

    - Malware was detected on one or more Firm devices. Please identify or describe the malware.

    - Access to a Firm web site or network resource was blocked or impaired by a denial of service attack. Please identify the service affected, and the nature and length of the impairment.

    - The availability of a critical Firm web or network resource was impaired by a software or hardware malfunction. Please identify the service affected, the nature and length of the impairment, and the cause.

- The Firm's network was breached by an authorized user. Please describe the nature, duration, and consequences of the breach, how the Firm learned of it, and how it was remediated.

- The compromise of a customer's or vendor's computer used to remotely access the Firm's network resulted in fraudulent activity, such as efforts to fraudulently transfer funds from a customer account or the submission of fraudulent payment requests purportedly on behalf of a vendor.

- The Firm received fraudulent emails, purportedly from customers, seeking to direct transfers of customer funds or securities.

- The Firm was the subject of an extortion attempt by an individual or group threatening to impair access to or damage the Firm's data, devices, network, or web services.

- An employee or other authorized user of the Firm's network engaged in misconduct resulting in the misappropriation of funds, securities, sensitive customer or Firm information, or damage to the Firm's network or data.

25. **Since January 1, 2013**, if not otherwise reported above, did the Firm, either directly or as a result of an incident involving a vendor, experience the theft, loss, unauthorized exposure, or unauthorized use of or access to customer information? Please respond affirmatively even if such an incident resulted from an accident or negligence, rather than deliberate wrongdoing. If so, please provide a brief summary of each incident or a record describing each incident.

26. For each event identified in response to Questions 24 and 25 above, please indicate whether it was reported to the following:

    - Law enforcement (please identify the entity)

    - FinCEN (through the filing of a Suspicious Activity Report)

    - FINRA

    - A state or federal regulatory agency (please identify the agency and explain the manner of reporting)

    - An industry or public-private organization facilitating the exchange of information about cybersecurity incidents and risks

27. What does the Firm presently consider to be its three most serious cybersecurity risks, and why?

28. Please feel free to provide any other information you believe would be helpful to the Securities and Exchange Commission in evaluating the cybersecurity posture of the Firm or the securities industry.

FOIA Confidential Treatment Request

January XX, 2013

VIA FACSIMILE and FEDERAL EXPRESS
Mr. Lead Examiner
United States Securities and Exchange Commission
Denver Regional Office
1801 California Street, Suite 1500
Denver, Colorado 80202-2656

Re: Examination of Firm XXOX (the "Registrant")

Dear Lead Examiner:

Firm XXOX hereby request FOIA confidential treatment pursuant to 17 C.F.R. 200.83 on all of the documents provided in response to the Securities and Exchange Commission's 2013 examination of Firm XXOX (the "Registrant") to address client and shareholder confidentiality, information about Registrant's employees, financial advisors, sales, marketing, pricing, and compensation that is not publicly disclosed, and business and financial information concerning the Registrant that is not publicly available and could be used to the advantage of its competitors. Each page of the documents includes a unique alphanumeric reference in the right hand bottom corner which is comprised of the year provided to the SEC (2013), a three letter abbreviation ("SEC"), and a document number (01, 02, 03, etc.). A "FOIA Confidential Treatment Document Log" is attached to this letter that indicates the files transmitted to you on the following dates _____. As this is not the end of the production of documents and information during this examination, Registrant will continue to log the document via the alpha numeric reference noted above and provide a final log to both you and the FOIA office upon the completion of the exam.

A copy of this request and the FOIA Confidential Treatment Document Log has been forwarded to the FOIA office via fax transmission. The Registrant further requests confidential treatment of this response, under the Freedom of Information Act and Rule 45a-1 under the 1940 Act, and a separate letter has been forwarded to the Chairman, Securities and Executive Commission, Washington, DC.

This letter is being provided to you voluntarily in connection with the matters discussed herein and confidential treatment is requested for reasons stated above. Accordingly, please inform one of the individuals named below of any request under the Freedom of Information Act seeking access to any of the foregoing records, including this letter, to enable us to substantiate the grounds for confidential treatment, unless the Commission intends to deny such request for access on other grounds. Also, the production of the any associated documents and the provision of information responsive to the SEC Staff's request is not intended to be construed in any manner as a waiver of any privilege or right which otherwise would be available to the Registrants or any affiliate of the Registrants.

Should you have any questions concerning this response to the Letter, please contact_____.

Respectfully submitted,